IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

CRP.No. 857 of 2004()

CMA.47/2001 of DISTRICT COURT, PATHANAMTHITTA
OS.187/1996 of MUNSIFF COURT, RANNI
(IA 550/1997)

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REVN. PETITIONER: APPELLANT/DEFENDANTS

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1. K.V.PONNAPPAN, KARIAKKATHU VEEDU,
KAKKAD MURI, PERUNAD VILLAGE, RANNI TALUK.

2. SHAH PONAPPAN, KARIKKATTU VEEDU,
KAKKAD MURI, PERUNNAD VILLAGE, RANNI TALUK.

BY ADV. SRI.PHILIP M.VARUGHESE
SRI.V.SETHUNATH

RESPONDENTS: RESPONDENTS/PLAINTIFFS

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1. CHELLAMMA K.V., KARIKKATTU VEEDU,
PERUNAD VILLAGE, VAYARAM MARUTHI,
KOONAMKARA P.O., RANNI.

2. RAJAPPAN K.V., MAVELIL HOUSE,
ANGAMOOZHY P.O., CHITTAR SETHATHODE VILLAGE,
RANNI TALUK.

3. THANKAMANI.K.V., KYLHICKAD,
MADAMON P.O., PERUNAD VILLAGE,
RANNI TALUK.

4. SHYLU, S/O.K.V.RAJAPPAN MAVELIL HOUSE,
ANGAMOOZHY P.O., CHITTAR, SEETHATHODE VILLAGE,
RANNI TALUK.

5. SHIBU, S/O.RAJAPPAN, MAVELIL HOUSE,
ANGAMOOZHY P.O., CHITTAR, SEETHATHODE VILLAGE,
RANNI TALUK.

R4 & 5 BY ADV. SRI.V.PHILIP MATHEW

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A. 2055/04 IN C.R.P. 857A/04

DISMISSED:

14/8/2007 SD/- M.N.KRISHNAN, JUDGE

jj /TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

C.R.P.No. 857 OF 2004 G

Dated this the 14th August, 2007.

O R D E R

This civil revision petition is preferred against the order of the learned District Judge whereby he had dismissed the application for condonation of delay in the C.M.A and as a consequential order dismissed the C.M.A itself. Defendants 1 & 7 in the original suit are the revision petitioners before this Court. There was an ex parte decree passed against them and they moved an application as I.A.550/97 to set aside the ex parte decree. Since steps were not taken it was dismissed for default. Thereafter the revision petitioners moved I.A.982/97 and 983/97 to condone the delay and restore the application for setting aside the ex parte decree which was dismissed for default. Those applications were also dismissed. Thereafter, according to the revision petitioner with a delay of 337 days a civil miscellaneous appeal has been preferred. But going by the factors it is seen that the delay is about 1365 days. The reason averred is that one of the defendants was abroad and the other defendant was laid up with paralysis. The District Judge had considered the matter in extenso and found that as per the medical certificate which is not proved P.W.1 was laid up with

paralysis from 17.7.2000 to 18.6.2001. It has to be remembered that even accepting the case of P.W.1 the disability to come and meet the lawyer arose only after 17.7.2000 whereas the orders under challenge were passed by the learned Munsiff on 22.7.1997 and 30.5.1998 respectively, or in other words more than two years prior to the handicap faced by P.W.1, the petitions had been disposed of by the court. There is absolutely nothing on record or evidence available to show the reason for condoning the delay. I am conscious of the fact that broad principles of natural justice demands an opportunity of being heard but this Court has cautioned the same in the decision reported in Plantation Corporation of Kerala Ltd. v. Hussain {1998(1) KLT 1008} following the decision of a single Judge of this Court in **Sreedhara Kurup v. Mickel** (1968 KLT 599) that this can be allowed provided the party is not guilty of gross negligence or grave misconduct. Here this is a classical case where both these factors exists per se on the face of the averments and attending circumstances. The party has kept quite for a period of more than four years to file an application and challenge the ex parte decree and therefore unless there is cogent evidence it cannot be allowed. It has to be also stated that when a right has accrued to a party it shall not be

shattered without reasons and it may not be proper for a court to put the winning party into the position of a loosing party by indiscriminately exercising the judicial discretion that is vested in it. As discussed by me earlier there is not even an iota of evidence or scrap of paper which would establish any reason for condoning the delay betwen 30.5.1998 and 16.7.2000. Therefore, sitting in the revisional jurisdiction I do not find any illegality or irregularity that surrounds the order under challenge. Therefore C.R.P is dismissed.

M.N.KRISHNAN
Judge

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